

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter
	)	Case No. 03-11489 (KG)
PLASSEIN INTERNATIONAL CORP., et al.,	)	Jointly Administered
	)	
<u>Debtors.</u>	)	
	)	
WILLIAM BRANDT, AS HE IS THE	)	
TRUSTEE OF THE ESTATES OF	)	
PLASSEIN INTERNATIONAL CORP., et al.	)	
	)	
Plaintiff,	)	Adv. Pro. No. 05-50692 (KG)
	)	BAP0762
v.	)	
	)	
B.A. CAPITAL COMPANY LP, THOMAS F. FAY, RUTH L.	)	
FISCHBACH, MARK R. FREEDMAN, ROBERT N. ZEITLIN,	)	
SIDNEY ZEITLIN, ZFC ASSOCIATES, INC., WILLIAM G.	)	
RUSSELL, ROBERT N. ZEITLIN1999 CHARITABLE	)	
REMAINDER UNITRUST, THE ANDREW MARSHALL	)	
FORSBERG TRUST, ETHEL FORSBERG REVOCABLE	)	
TRUST, JANIS RAE FORSBERG TRUST,	)	
FRANK JOHN McCARTHY, DANIEL R. ORRIS,	)	
BERNADINE ORRIS, SAM CHEBEIR, CHARLES J. WARR,	)	
PAUL D. GAGE, STEPHEN S. WILSON, G. KENNETH POPE	)	
JR., KENNETH OLENDER and DANIEL A. JONES III,	)	
	)	
Defendants.	)	
	)	

**COUNTER-DESIGNATION OF ITEMS TO BE INCLUDED IN THE  
RECORD ON APPEAL SUBMITTED BY KEY PACKAGING DEFENDANTS**

The Key Packaging Defendants hereby counter-designate the following items to be included in the record on appeal:

Docket Item      Document

To be docketed      Transcript of hearing held on April 12, 2007

\*76      Letter from Richard A. Johnston, Esquire to The Honorable Walter Shapero dated December 13, 2006

\*77      Letter from Richard A. Johnston, Esquire to The Honorable Walter Shapero dated January 4, 2007

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Dated: May 17, 2007

- AND -

WILMER CUTLER PICKERING  
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*Attorneys For Key Packaging Defendants*

Pac#795959

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\* These two letters were sent to Judge Shapero on the dates set forth in the letters, but were not placed on the docket at that time. Counsel for the Plaintiff/Appellant Trustee has consented to the inclusion of these letters in the record on appeal.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 7
PLASSEIN INTERNATIONAL CORP., et al.,	)	Case No. 03-11489 (KG)
	)	Jointly Administered
Debtors.	)	
	)	
WILLIAM BRANDT, AS HE IS THE	)	
TRUSTEE OF THE ESTATES OF	)	
PLASSEIN INTERNATIONAL CORP., et al.	)	
	)	
Plaintiff,	)	Adv. Pro. No. 05-50692 (KG)
	)	BAP 07-62
	)	
v.	)	
	)	
B.A. CAPITAL COMPANY LP, THOMAS F. FAY, RUTH L.	)	
FISCHBACH, MARK R. FREEDMAN, ROBERT N. ZEITLIN,	)	
SIDNEY ZEITLIN, ZFC ASSOCIATES, INC., WILLIAM G.	)	
RUSSELL, ROBERT N. ZEITLIN1999 CHARITABLE	)	
REMAINDER UNITRUST, THE ANDREW MARSHALL	)	
FORSBERG TRUST, ETHEL FORSBERG REVOCABLE	)	
TRUST, JANIS RAE FORSBERG TRUST,	)	
FRANK JOHN McCARTHY, DANIEL R. ORRIS,	)	
BERNADINE ORRIS, SAM CHEBEIR, CHARLES J. WARR,	)	
PAUL D. GAGE, STEPHEN S. WILSON, G. KENNETH POPE	)	
JR., KENNETH OLENDER and DANIEL A. JONES III,	)	
	)	
Defendants.	)	
	)	

**INDEX TO  
COUNTER-DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD  
ON APPEAL SUBMITTED BY KEY PACKAGING DEFENDANTS (D.I. 78)**

<u>Document</u>	<u>Exhibit No.</u>
Transcript of hearing held on April 12, 2007 (To Be Docketed & Ordered)	1
Letter from Richard A. Johnston, Esquire to The Honorable Walter Shapero, dated December 13,2006 (D.I. 76, May 17, 2007)	2
Letter from Richard A. Johnston, Esquire to The Honorable Walter Shapero, dated January 4, 2007 (D.I. 77, May 17, 2007)	3

Dated: May 17, 2007

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*Attorneys For Key Packaging Defendants*

Pac#796172

**TO BE DOCKETED & HAS BEEN ORDERED**

**APRIL 12, 2007 Transcript**

## WILMERHALE

December 13, 2006

Richard A. Johnston

The Honorable Walter Shapero  
 U.S. Bankruptcy Court  
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 Detroit, MI 48226

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 richard.johnston@wilmerhale.com

Re: *In re Plassein International Corp.*, Case No. 03-11489 (WS), Adv. Proc. No. 05-50692 (Bankr. D. Del.)

Dear Judge Shapero:

As counsel for Defendants Thomas F. Fay, Ruth L. Fischbach, Mark R. Freedman, Robert N. Zeitlin, Sidney Zeitlin, ZFC Associates, Inc., William G. Russell, and Robert N. Zeitlin 1999 Charitable Remainder Unitrust, all former Key Packaging Industries Corporation shareholders, we write to inform you that we join in the December 8, 2006, letter sent to you by counsel for B.A. Capital Co. LP in the above-captioned matter.

In particular, we wish to highlight for the Court the decision in *In re National Forge Co.*, 344 B.R. 340 (W.D. Pa. 2006), described in the aforementioned letter. As B.A. Capital points out, the District Court in that case considered and rejected the very argument that the Trustee has raised in this case – namely, that section 546(e) of the Bankruptcy Code provides less protection to transactions involving privately traded securities than it does to transactions in publicly traded securities. The District Court found, as we have argued in this case, that section 546(e) precluded avoidance of a settlement payment by or to a financial institution, a conclusion dictated by the Third Circuit's decision in *In re Resorts International*, 181 F.3d 505 (3d Cir. 1999).

We respectfully submit, as B.A. Capital has done, that this Court should follow the Third Circuit in *Resorts International*, the District Court in *National Forge*, and the various other cases cited in our briefs, which compel dismissal of this case.

Yours sincerely,

Richard A. Johnston  
 cc: All Counsel

The Honorable Kevin Gross  
 Delaware Chambers  
 844 King Street  
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WILMERHALE

Richard A. Johnston

January 4, 2007

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Hon. Walter Shapero  
U.S. Bankruptcy Court  
211 W. Fort Street  
Detroit, MI 48226

Re: In Re Plassein International Corp., et al., Case No. 03-11489 (WS),  
Adv. Proc. No. 05-50692 (WS) (Bankr. D. Del.)

Dear Judge Shapero:

We represent Thomas F. Fay, Ruth L. Fischbach, Mark R. Freedman, Robert N. Zeitlin, Sidney Zeitlin, ZFC Associates, Inc., William G. Russell, and Robert N. Zeitlin 1999 Charitable Remainder Unitrust (the "Key Packaging Defendants") in the above-captioned proceeding. The Key Packaging Defendants join B.A. Capital Company LP ("BACC") in urging you to consider In re The IT Group, Inc., No. 02-10118 (MFW), Adv. No. 04-51311 (MPW). Slip. Op. (Bankr. D. Del. Dec. 29, 2006) as further support for the defendants' motions here to dismiss the Trustee's fraudulent transfer claims.

The Key Packaging Defendants endorse the arguments set forth by BACC. In addition, the Court should note that In re Resorts International, 181 F. 3d 505 (3<sup>rd</sup> Cir. 1999) is even more dispositive of the present case than it was of IT Group, inasmuch as this case, like Resorts, involves leveraged buyout transactions, whereas IT Group did not. See *Id.* at 11.

Sincerely,



Richard A. Johnston

RAJ:bs

cc: Counsel of Record